IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

C.P. No. 75 of 2006

Dinesh D. Dedhia & anr. ... Petitioner
VS.
Jayesh Tokarshi Shah and 2 ors.... ... Respondents

Mr. S. M. Vaishnava i/b. Vaishnava & Co. for petitioner
Mr. Rajiv Narula for respondent

CORAM: D. G. KARNIK **J.**

DATE: 10th November, 2006

P.C.:

1. Heard learned counsel for the parties. This contempt petition is filed alleging that the respondents have committed breach of the consent order passed by the City Civil Court dated 24th September 2001 in L. C. suit no. 582 of 2001.
2. In the suit no. 582 of 2001 consent terms were filed by the petitioners and the respondents under which the respondents agreed to give to the plaintiff 525 sq. feet built up area, in lieu of old rented premises and further area of 225 sq. ft. within 12 months. Thus the respondents agreed to give an area of 750 sq. sq. ft. within a period of 12 months.
3. According to the petitioners the Respondents delayed the construction and handed over the premises in April / May

2003 and that too, an area of 712 sq. ft. and thereby the respondents have committed breach of the order.

4. The breach if any, has occurred in May 2003. In may 2003 the petitioners were aware that the possession has been delayed for about a year. They were further aware that the area handed over was less by 38 sq. ft. The petitioners accepted the premises of less area with full knowledge that the area was less and there was a delay. The present petition has been filed in the year 2006, after a lapse of 3 years and is clearly barred by limitation.

5. Learned counsel for the respondents states that an arrangement was arrived at between the petitioners and the respondents under which the respondents agreed to compensate the petitioners for the delay in handing over the possession by one year, and the difference in the area. This fact, ofcourse, is denied by the respondents. Assuming however, that the respondents had agreed to pay the compensation that would amount to a separate arrangement between the parties and not a part of the consent terms. Therefore the petitioner cannot allege contempt by the respondents for breach of such a separate arrangement, if any, entered into between the parties.

6. There is thus no merit in the petition, which is barred by limitation. Contempt petition is accordingly dismissed.

(D.G. KARNIK J.)